

Notice of Allowability

Application No.

09/989,077

Examiner

Binta M. Robinson

Applicant(s)

SELENT ET AL.

Art Unit

1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response to the election/restriction requirement filed 5/19/04.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 4/03;4/04/10/02 | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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Claims 1-17 are pending.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Don Drummond on 6/9/04.

The application has been amended as follows:

A. The restriction requirement where Group II, is drawn to claims 1-6 is modified to be drawn to claims 1-13, because Group II reads on claims 1-13. The elected Group II invention is modified to be drawn to claims 1-13, to the phosphinine compound of formula I and the metal complex wherein n is or 1, Y is O, NH, NR₁ wherein R₁ is as claimed, R₂-R₉ are all the radicals claimed except aliphatic-heterocyclic or heterocyclic, M is as claimed, Q can be any moiety claimed except heterocyclic or aliphatic-heterocyclic, W and X can be any radical claimed except heterocyclic or aliphatic-heterocyclic, and W and X are covalently linked to one another. The nonelected subject matter has been withdrawn from consideration.

B. In line 9, of claim 1, page 24 of the claims, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic,--.

C. In line 20, of claim 1, page, 24 of the claims, the phrase "aliphatic-alicyclic, heterocyclic," is amended to -- aliphatic-alicyclic--.

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D. In line 21, of claim 1, page, 24 of the claims, the phrase "aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

E. In line 23, of claim 1, page 24 of the claims, the phrase "aliphatic-alicyclic, heterocyclic" is amended to -- aliphatic-alicyclic--.

F. In line 2, of claim 2, page 25 of the claims, the phrase "aliphatic-alicyclic, heterocyclic, aliphatic-heterocyclic," is amended to—aliphatic-alicyclic--.

G. In line 7, page 26 of the claims, of claim 4, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

H. In line 9, page 27, of claim 5, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

I. In line 4, page 28, of claim 6, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

L. In claim 7, line 6, page 29, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

M. In claim 7, line 17, page 29, the phrase "aliphatic-alicyclic, heterocyclic" is amended to --aliphatic-alicyclic--.

N. In claim 7, line 18, page 29, the phrase "heterocyclic, aromatic" is amended to --aromatic--.

O. In claim 8, line2, page 29, the phrase "aliphatic-alicyclic, heterocyclic" is amended to --aliphatic-alicyclic----.

P. In claim 10, line 7, page 31, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

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Q. In claim 11, line 6, page 32, the phrase "aliphatic-alicyclic, heterocyclic, aliphatic-heterocyclic, aromatic" is amended to -- aliphatic-alicyclic, aromatic--.

R. In claim 12, line 4, page 33, the phrase "heterocyclic, aliphatic-heterocyclic, aromatic" is amended to --aromatic--.

S. Claims 14-17 are cancelled without prejudice to the applicant filing a divisional application on these claims.

REASONS FOR ALLOWANCE

The IDS filed 4/3/04, 10/15/02, and 4/3/02 have been considered and do not read on nor render obvious the claimed subject matter.

The following is an examiner's statement of reasons for allowance: The closest prior art reference is Dewar et. al. (See Reference U). The difference between the Dewar compound and the instantly claimed compound is the substitution on the P atom of the dibenz [c,e][1,2]azaphosphorine ring. In the instant compound, the P atom is substituted with OalkylPAIKNHAIK moiety. In the Dewar compound, the P atom of the dibenz [c,e][1,2]azaphosphorine ring is substituted with Cl. At pages 5685 and 5686, see the compound of formula II, compound, 10-chloro-10,9-borazarophenanthrene.

The prior art reference does not teach nor suggest to one of ordinary skill in the art how to modify the prior art compound to derive the instant compound. Therefore, the instant claims are allowable therefrom.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

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accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binta M. Robinson whose telephone number is (571) 272-0692. The examiner can normally be reached on M-F (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on 571-272-0699.

A facsimile center has been established. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machine are (703)308-4242, (703)305-3592, and (703)305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1600.



BMR
June 9, 2004



JOSEPH K. MCKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600